

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

KELLEY D.F. HARDWICK,

Plaintiff,

-against-

GENO AURIEMMA, individually and as an employee  
of USA BASKETBALL, INC., USA BASKETBALL,  
INC., and THE NATIONAL BASKETBALL  
ASSOCIATION,

Defendants.

Index No.

**VERIFIED COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Kelley D.F. Hardwick ("Plaintiff" or "Mrs. Hardwick"), by and through her attorneys, Newman Ferrara LLP, as and for her Complaint, alleges upon knowledge, information, and/or belief as follows:

**PRELIMINARY STATEMENT**

1. Plaintiff brings this action for employment discrimination against Defendants, Geno Auriemma ("Auriemma"), USA Basketball, Inc. ("USAB"), and the National Basketball Association, Inc. ("NBA"), under the New York State Human Right Law ("NYHRL"), N.Y. Executive Law § 296 *et seq.* and the New York City Human Rights Law ("NYCHRL"), N.Y.C. Administrative Code § 8-107 *et seq.*, and seeks monetary and injunctive relief, disbursements, costs, and fees.

2. In October 2009, during a trip to Russia with the USAB Women's Senior National Team, Defendant Auriemma stalked, assaulted, and battered Plaintiff by following her to her room, grabbing her about the arm and attempting to forcibly kiss her on the mouth. Such contact was offensive and unwanted but fortunately thwarted by the Plaintiff.

3. Plaintiff reported the incident to her colleagues and superiors but remained willing to continue her travel assignment with the USAB Women's Senior National Team, a prestigious position she coveted, enjoyed, and took great pride in.

4. Despite her willingness to continue her USAB assignment (which she had had for many years prior), Defendant Auriemma, apparently spurred by rejection, continued to act vindictively towards her on subsequent USAB trips and ultimately undertook to deprive her of her USAB duties by demanding that the NBA relieve her of her USAB travel assignment, including her duties overseeing security for the Women's National Basketball Team at the 2012 Olympic Games in London, England.

5. Despite Plaintiff's untarnished record with USAB, when she complained to NBA officials that she believed Auriemma's effort to have her removed stemmed from her rejection of his sexual advances, the NBA failed to do a meaningful investigation (including failing to speak to Auriemma or many of the witnesses she provided), and instead complied with Auriemma's request and removed Plaintiff from her USAB duties.

6. In sum, this action alleges that because the Plaintiff had the temerity to fend off an attempted sexual advance by Coach Auriemma she has been relieved of her long term duties maintaining security for the Women's National Basketball Association ("WNBA") players traveling with USA Basketball, and she has been the victim of a corporate culture of gender discrimination to such an extent that she has been subjected to a flagrant and persistent glass ceiling with regard to her regular employment with the NBA.

7. The NBA maintained and continues to maintain a discriminatory workplace where Plaintiff has been continually denied promotions based on her gender. Plaintiff alleges further that the NBA, through certain individuals, engaged in gender discrimination by assigning

her to perform duties that would afford her less opportunity for advancement than similarly situated male employees. The NBA also denied her employment opportunities that were afforded to male employees so that male employees could advance in their careers. Plaintiff alleges that from the date of her hire and continuing up to and including the present, she has been denied compensation and other emoluments commensurate with male employees who were similarly situated in terms of experience, seniority and skillset.

8. Moreover, this environment permitted for a grossly negligent investigation into her complaint where the perpetrator, Defendant Auriemma, was never even interviewed by the NBA representative allegedly tasked with investigating her complaint.

9. As a direct and proximate result of the foregoing violations of law and/or deprivations, Plaintiff seeks an award of injunctive relief, compensatory damages, an award of back pay and front pay, punitive damages, and such other relief as the Court deems just and proper.

## **PARTIES**

### **Plaintiff**

10. Plaintiff is an African-American female citizen of the United States who resides in New York State. Mrs. Hardwick is a graduate of Pace University School of Law and a former Detective, 3<sup>rd</sup> Grade, of the New York City Police Department. Beginning in 2002, and at all times relevant to the allegations in the Complaint, Mrs. Hardwick was employed by the NBA. Currently, Mrs. Hardwick is a Director in the Security Department of the NBA. She is the only female Director in the Security Department and is responsible for security for the NBA and WNBA.

11. This action and her desire to be free from discrimination notwithstanding, Mrs. Hardwick continues to perform her duties diligently and remains a dedicated employee of the NBA.

### **Defendants**

12. Defendant Auriemma is the Head Coach of the 2012 United States Olympic Team, the Women's Senior National Team, and the Women's Basketball Team of the University of Connecticut.

13. Defendant USAB is an Illinois Corporation with its principal place of business in Colorado Springs, Colorado. USAB is the national governing body for the sport of basketball and recommends to the United States Olympic Committee individuals and teams to represent the United States in Olympic Games in the sport of basketball. USAB also sponsors the Women's Senior National Team in international basketball events. The Women's Olympic Team is chosen from members of the Women's Senior National Team. The members of the Women's Senior National Team are either athletes with the WNBA or, occasionally, collegiate athletes. Defendant NBA is a professional member of USAB.

14. Defendant NBA is an integrated business enterprise that is organized as a joint venture with its principal place of business at 645 Fifth Avenue, New York, New York, 10022.

### **FACTUAL ALLEGATIONS**

15. In November of 2002, Mrs. Hardwick began her employment in the NBA's Security Department (the "Security Department") as a Senior Security Manager. However, she had applied for a position as Director in the Security Department. The position had never been held by less than the title of Director. Upon her hire, Plaintiff was informed by the Senior Vice President of Security for the NBA, Bernard Tolbert ("Tolbert"), that although she would perform

all the functions of a Director, she would have the title of Senior Manager. While Plaintiff performed the functions of a Director, she was paid the salary of a Senior Manager.

16. At all times relevant to the Complaint, Mrs. Hardwick was and is the only female manager in the Department.

17. Upon her hire, Mrs. Hardwick was responsible for the supervision of facility security for 645 5th Avenue, the NBA's corporate office, various NBA assignments and the WNBA. Plaintiff was, however, denied numerous employment opportunities that were made available to her male counterparts who performed similar functions for the NBA Security Department. Moreover, the facilities security assignment was reassigned to a male colleague who has since received several promotions. As a result of their assignment to more prestigious opportunities, similarly situated males were able to advance in the Security Department, whereas Mrs. Hardwick's opportunity for advancement was stymied as a result of the aforementioned pattern of discriminatory assignments.

18. In 2005, Plaintiff requested a promotion to Director since she had been performing the functions of a Director for over three years. Tolbert promoted her, but failed to give her a salary increase commensurate with the position. On information and belief, Plaintiff was paid then and continues to be paid less than male Directors in the Security Department. When she inquired of Tolbert why she did not receive an appropriate raise, he stated, "I thought you only wanted a promotion not a raise."

19. Since 2005, Plaintiff continually has slammed against the NBA's glass ceiling and has not received any promotions despite the fact that less or equally qualified males in the Security Department repeatedly have been promoted over or receive more monetary compensation than Mrs. Hardwick.

20. Since her hire, Plaintiff's responsibilities have included, but were not limited to, the following: security oversight for the NBA Development League, a host of NBA related security assignments including the NBA All Star Jam Session for the past 10 years and security for all WNBA teams, including the recruitment, hiring and supervision for the security representatives for each team, the administration of drug testing for all WNBA players, including drug collector training for all security representative participants, the management and maintenance of the WNBA Life Management Program, which consists of consultation with the League's Medical Director for any players that may exhibit a need for counseling due to depression, stress, anxiety, or drug use etc., the compilation and presentation of security training at both the WNBA Rookie Orientation Program and WNBA Referee Orientation, the review and update of all security related manuals, yearly, all WNBA investigations, serving as the point of contact for all security related player matters and the Security Head for USAB's Women's Senior National Team.

21. Plaintiff's job description also provides that she is responsible for managing security at international events. In connection with this responsibility, since her hire, Plaintiff has provided security for the NBA Basketball Without Borders program in Dakar, Africa and Rio De Janeiro, Brazil, and the Women's Team for the 2004 Olympics in Athens Greece and the 2008 Olympics in Beijing, China. Since 2002, she has provided security oversight for the Women's National Team for the following events: 2004 Spanish Invitational (Havana, Cuba & Poland), 2004 USAB's Women's Senior National Team Training (Germany & Budapest), 2006 World Challenge (Hungary, Poland and Australia), 2006 FIBA World Championship (Brazil), 2007 College Tour (Maryland, Connecticut, California, Texas and Arizona), 2007 FIBA World League Tournament (Italy, New Jersey & Yekaterinburg, Russia), 2007 Women's Senior

National Team Training (Chile), 2008 USAB's Men's Olympic Nike Tour (New York City), 2009 USAB's Women's Senior national Team (Yekaterinburg, Russia), 2010 USAB's Women's Senior National Team/Pre-world Championship (Hartford, Connecticut/Salamanca Spain) and 2011 USAB's Women's Senior National Team Training (Italy, Spain, Czech Republic & Hungary).

22. None of the male managers in the NBA have the same level of experience with the Olympic Games as does Plaintiff. In fact, none of the male managers have worked on two Olympic Games. Mrs. Hardwick has more years of experience with providing security with teams sponsored by USA Basketball than any of her male counterparts and is the most senior of the basketball managers.

23. Despite her numerous accomplishments with the NBA Development League, NBA and WNBA, Plaintiff has not received a promotion since 2005.

24. In October 2009, Plaintiff traveled with the Women's Senior National Team to Yekaterinburg, Russia for an Invitational Tournament. Plaintiff was responsible for providing security oversight for the WNBA players who played for the Women's Senior National Team. Also on the trip was Defendant Auriemma. Plaintiff had never met Defendant Auriemma previously.

25. On or about the evening of October 9, 2009, Plaintiff and her staff person, Rachel Shannon, an African-American female, were in the lounge of the hotel where the team was staying. Defendant Auriemma, uninvited, approached the two women, sat at their table, and engaged them in conversation. Defendant Auriemma stated that his parents were poor Italian immigrants, and that he did not grow up wealthy, and could "relate to inner city blacks." During

the unwelcomed conversation, Defendant Auriemma made a number of inappropriate comments that increasingly made Plaintiff and Ms. Shannon uncomfortable.

26. Eventually, Plaintiff and Ms. Shannon left the lounge and headed toward the elevators to return to their rooms. As they waited for the elevator, Defendant Auriemma appeared. They all entered the same elevator, and Ms. Shannon exited at her floor.

27. Upon reaching her floor, Plaintiff exited the elevator and proceeded to walk towards her room. Defendant Auriemma exited the elevator as well and, unbeknownst to Plaintiff, was following her to her room. As Plaintiff put her key into the door, Defendant Auriemma approached her from behind, took hold of her left arm, and, as she turned, he forcibly tried to kiss her on her mouth. Plaintiff was startled but, utilizing her training as a police officer and security professional, reacted quickly by shoving him away and stating, "What are you doing? You better check yourself before you get hurt!"

28. After being rebuffed, Defendant, red-faced, turned and walked quickly back in the direction of the elevators. Once he was out of her sight, Plaintiff entered her room, called Ms. Shannon and relayed the entire disturbing incident to her.

29. The next morning, Defendant Auriemma nervously avoided eye-contact with the Plaintiff and said nothing to her as the team boarded the team bus.

30. That afternoon, a USAB media person was taking photos of the team, and several of the athletes asked Plaintiff and Ms. Shannon to join them in the photo. Defendant Auriemma was overheard calling Plaintiff "ghetto" and stating "I don't know why they are calling Shaniqua over here."

31. When she returned to the NBA office, Plaintiff advised several managers, including, but not limited to, her supervisor Tolbert about the incident. Tolbert asked whether



Auriemma had been drinking and stated, “Well, these things happen.” Nothing was done by Defendant Tolbert or other NBA managers to investigate the incident.

32. Plaintiff traveled with the USAB Women’s team two subsequent times following the October 2009 trip. The first was in October 2010 to the Women’s Senior National Training Camp/Pre-World Championship in Hartford, Connecticut and Salamanca, Spain. The second was in October 2011 to the Women’s Senior National Team Training Session in Italy, Spain, Czech Republic and Hungary.

33. During the first trip, Defendant Auriemma continued his obvious avoidance of Plaintiff but his apparent discomfort with her presence manifested as vindictiveness. The Plaintiff, being one of only two members of the USA Basketball delegation who elected to wear a Nike baseball cap emblazoned with the USA Basketball Insignia (which was issued to her as part of the USA uniform), was informed by the USA Basketball Travel Director, Carol Callan, that Coach Auriemma did not want her to wear the baseball cap. Despite finding the request ridiculous, Plaintiff nonetheless complied without question.

34. During the second trip, Defendant Auriemma used Callan once again to send a “you’re not welcome here” message through her colleague Rachel Shannon, who told Plaintiff that Auriemma wanted her to stop encouraging the players while they were playing – Plaintiff had been clapping or cheering for them during the games. Such encouragement had been routine and welcome since 2003.

35. On information or belief, in June 2011, after Tolbert left the employ of the NBA, Plaintiff’s direct supervisor, Gregory Robinson (“Robinson”), advised Plaintiff that Tolbert had rejected positive evaluations Robinson had drafted for her, erased them, and then rewrote

negative evaluations which were then sent in under Robinson's name. At the time, Tolbert was still Robinson's superior so he did not protest but he expressed regret about it to the Plaintiff.

36. On or about March 22, 2012, after a conference call between James Cawley "(Cawley)" (Tolbert's successor as Senior Vice President of Security), Randy Inniss (Senior Director of Security), Greg Robinson (Senior Director of Security), and Joel Downing (Director of Security), and a host of NBA Arena Security Directors, Cawley stated that Defendant Auriemma had communicated through USA Basketball CEO and Executive Director, Jim Tooley ("Tooley"), that Defendant Auriemma wanted the NBA to remove Plaintiff from the Women's Olympic Team Security assignment in London, England .

37. On or about March 24, 2012, Cawley advised Plaintiff that she would not oversee security for the USAB's Women's National Basketball Team at the London Olympics. Plaintiff later learned that Cawley was acting pursuant to a demand by Auriemma (via Tooley). Having received no prior complaints regarding performance of her USAB-related duties, Plaintiff was convinced, and reasonably so, that Defendant Auriemma had exercised his influence through USAB and the NBA to retaliate against her for rejecting his prior sexual advance and causing him embarrassment and discomfort with her continued presence.

38. On or about March 25, 2012, Plaintiff advised Cawley that she had learned of the Tooley call and that Defendant Auriemma was the one who wanted her removed from the assignment. He did not deny that her information was correct. She further advised Cawley of the October 2009 incident, the fact that she had reported the incident to the NBA, and that she believed Defendant Auriemma did not want her on the assignment because she had rejected him and caused him embarrassment. She told Cawley that she felt abused by both Defendant

Auriemma and the NBA and that she believed the NBA was acquiescing in or condoning Defendant Auriemma's discriminatory behavior.

39. On or about March 29, 2012, Plaintiff received a call from NBA Senior Vice President and General Counsel Neal Stern advising her that he had heard that she had reported an incident that occurred in Russia with Auriemma. She advised Stern about the incident and her belief that Auriemma was seeking to exact punishment on her for refusing his sexual advances and to avoid further interaction with her. The Plaintiff further provided Stern with a list of witnesses who could corroborate her version of events. Stern told the Plaintiff that he would investigate the incident.

40. It should be noted that the Senior Vice President of Human Resources is an African American female, who is normally tasked with conducting investigations of this nature; however, at no time since Mrs. Hardwick's second notification to the NBA about Auriemma's unwelcome sexual advance was she contacted by her or involved in the investigation.

41. On or about April 26, 2012, Stern contacted Plaintiff and advised her that he had concluded his investigation and had determined that the decision by USAB had nothing to do with her complaint regarding Auriemma. She inquired as to whether Stern spoke to Auriemma to ask him about her allegations. Incredibly, Stern would not tell her who he interviewed but confirmed that he had not spoken with Auriemma or many of the other witnesses she had provided him.

42. By acquiescing to the demands of Auriemma and USAB to remove Plaintiff from her security duties with WNBA players traveling with USAB, the NBA has furthered and ratified the discriminatory actions of others. Having failed to address Plaintiff's concerns in any meaningful way, and having failed to undertake a proper and thorough investigation into her

allegations, either in 2009 or in 2012, the NBA has continued its pattern of discrimination against her. These actions, collectively, evince that Plaintiff continues to suffer the effect of discrimination, including being denied opportunities for advancement.

## **CAUSES OF ACTION AGAINST DEFENDANTS**

### **First Cause of Action**

#### ***Violation of New York State Human Rights Law***

43. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

44. The conduct complained of herein by the Defendants constitutes unlawful discrimination, harassment, and retaliation in violation of New York State Human Rights Law

45. The NBA condoned, ratified, and acquiesced in the foregoing conduct of its employees, and the terms and conditions of employment and is responsible under the doctrine of *respondeat superior* for the discriminatory acts of its employees, including, but not limited to, Tolbert and Stern.

46. USAB condoned, ratified, and acquiesced in the foregoing conduct of its employees and is responsible under the doctrine of *respondeat superior* for the discriminatory conduct of its employees, including, but not limited to, Tooley and Auriemma.

### **Second Cause of Action**

#### ***Violation of New York City Human Rights Law***

47. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

48. The conduct complained of herein by the Defendants constitutes unlawful discrimination, harassment and retaliation in violation of the New York City Human Rights Law

49. The NBA condoned, ratified, and acquiesced in the foregoing conduct of its employees, and the terms and conditions of employment and is responsible under the doctrine of *respondeat superior* for the discriminatory acts of its employees, including, but not limited to, Tolbert and Stern.

50. USAB condoned, ratified, and acquiesced in the foregoing conduct of its employees and is responsible under the doctrine of *respondeat superior* for the discriminatory conduct of its employees, including, but not limited to, Tooley and Auriemma.

### **DAMAGES**

51. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

52. The actions of the Defendants, and each of them, were committed intentionally, wantonly, and with malice, warranting the imposition of punitive damages.

53. As a result of the actions of the Defendants, and each of them, Plaintiff has suffered emotional distress, humiliation, degradation, and loss of income and the benefits of employment.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff seeks the following relief:

- A. Compensatory damages;
- B. An award of back pay;
- C. An award of front pay;
- D. Punitive damages;
- E. Costs, disbursements, expert fees and attorneys' fees;

F. Any and all other injunctive and equitable relief that the Court deems just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury

DATED: New York, New York  
June 8, 2012

**NEWMAN FERRARA LLP**

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*Counsel for Plaintiff*

**VERIFICATION**

STATE OF NEW YORK     )  
                                      )     ss:  
COUNTY OF NEW YORK    )

Kelley D.F. Hardwick, being duly sworn, deposes and says that deponent is the Plaintiff in the within action, that he has read the foregoing Complaint and knows the contents thereof, that the same is true to Deponent's own knowledge, except as to the matters stated therein to be alleged on information and belief, and that as to those matters deponent believes them to be true.

  
\_\_\_\_\_  
KELLEY D.F. HARDWICK

STATE OF NEW YORK     )  
                                      )     ss:  
COUNTY OF NEW YORK    )

On the 8 day of July, 2012, before me personally came Kelley D.F. Hardwick to me known to be the individual described herein and who executed the foregoing instrument, and who duly acknowledged to me the execution thereof.

\_\_\_\_\_  
NOTARY PUBLIC

**JEFFREY M. NORTON**  
Notary Public, State of New York  
No. 02N06004850  
Qualified in New York County  
Commission Expires March 30, 2014